

M 430012
111-430030 CC: Susan
Mary Ann ✓
Steve A.
Lynn

STEVEN A. WUTHRICH
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FAX COVER SHEET

FAX NUMBER TRANSMITTED TO:

To: *Susan White*

Of: *801 359 3940*

From: Steven A. Wuthrich

Client/Matter: *WRIGHT Garff*

Date: *10-10-06*

DOCUMENTS	NUMBER OF PAGES*
<i>Letter</i>	<i>2</i>
<i>Findings Order</i>	<i>6</i>
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COMMENTS:

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NOV 13 2006

DIV. OF OIL, GAS & MINING



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November 10, 2006

Susan M. White
Mining Program Coordinator
Minerals Regulatory Program
Department of Natural Resources, Division of Oil Gas and Mining
1594 W. N. Temple, Ste. 1210
P O Box 145801
Salt Lake City, UT 84114-5801

SENT BY FAX AND REGULAR MAIL

Re: Notice of Objection to Decision; Request for Agency Action; Notice of Appeal of Application
Denial and Request for Relief

Dear Ms. White:

This is a letter in response to your denial of Wright/Garff Resources LLC Notice of Intention to Commence Small Mining Operations Permit, Tasks #1532, Summit County, Utah. This office represents Wright/Garff Resources LLC and is hereby notifying you in writing of the objections to your determination. In your letter of October 30, 2006 you state that "the owner of the surface estate has a large mine permit on the same area of your proposed operations". Wright/Garff Resources hereby requests that you revoke that permit with respect to the approximately 25 to 27 acres on which Lon Thomas or his associated entities had previously had a mining permit on Lot 38, Brown's Canyon, Summit County, Utah. Mr. Thomas, and his entities, no longer have any interest in the mineral estate and, accordingly, to continue to provide him a mining permit on land where he has no mineral interest whatsoever is inappropriate. Of course, you can modify his permit to apply to the 3 to 5 acre parcel of BLM ground on which, we believe, there is only an unmarketable resource, but request forthwith and immediately that any mining permit be revoked respecting the property where my client owns 95% of the mineral interest estate and Thomas and his entities have no percentage of interest therein.

You further make a statement in your letter "as owner of the mineral estate you have the right to extract minerals, but you also must provide reasonable compensation and make reasonable accommodation for the surface estate owners' use of the land". Do you have any authority whatsoever for this proposition? While we have heard Victor Jackson, general counsel for Lon Thomas entities, make this same allegation, we have yet to see any legal authority supporting this proposition.

These parties have previously already had their rights, liabilities, and scope of authority adjudicated. Enclosed herewith is the Order Granting Partial Summary Judgment and Judgment Quieting Title and Dismissing Other Claims With Prejudice. Specifically, the order quieting title

provides in relevant part, in paragraph 2 that "title is hereby quieted in Wright/Garff Resources L.L.C., a Utah limited liability company in and to an undivided 86.76111 percent interest in and to all building stone and other minerals and 100% of all other subsurface minerals and rights in and under the following real property in Summit County, Utah, now underlying together with rights of ingress, egress, and reasonable surface use to prospect for, mine and remove same, including without limitation the right to utilize surface or open pit mining and/or quarrying methods..."

As you can see, the Court has already considered the relative rights of the parties. Principles of *res judicata* dictate that parties must bring parol claims they have in an action or forever be barred. Had Thomas American Stone and the related entities sought to protect their surface rights or to seek compensation therefore, they certainly would have had that opportunity in that action. Again, I don't believe that there is any legal authority for the novel legal position that you have proposed under the circumstances of this case. I suppose, in a case where someone had a house built and the mining had to occur right under their home, there may well be a case out there respecting compensation in such a situation, but that is not the case at bar.

However, in the present circumstances, the quarry is, in essence, a cliff. No one can build on it. Thus there is nothing to compensate Mr. Thomas or his entities for. We reject and object wholeheartedly to the divisions attempt to usurp or overrule Judge Bryan's decision in Third District Court case #94-03-00111 which is now a final and unappealed judgment, and is the law of the case by and between these two parties, your naked assertions notwithstanding.

You have also stated "until you either reach a voluntary agreement with the surface owner or have your respective rights adjudicated, the division is unable to proceed with the evaluation of your notice. This letter is to put you on notice that we already had our respective rights adjudicated. We are not going to be blackmailed into entering into an agreement with Lon Thomas or his entities under any circumstances. The adjudication is done, final, unappealable, and is as clear and specific as it could possibly be. Please review the judgment quieting title and the order granting the motion for summary judgment which has been recorded into the records of Summit County, Utah, and respect the adjudication thereof. We kindly ask that you reverse your decision and proceed with the evaluation of our notice of intent to commence small mining operations forthwith.

We request the agency take action to revoke Lon Thomas' and his associated entities' mining permit with respect to the property on which my client is the subsurface owner and mineral rights holder (at this point Wright/Garff Resources has acquired in excess of 95% of the building stone and other mineral rights with respect to all of Lot 38 save and except that small portion of BLM ground). We further request that our application be processed in the ordinary course and appeal any and all adverse determinations you have made to the contrary pursuant to R-647-5 *et seq* and request an informal hearing, or formal, as applicable. Kindly do not return our permitted fee.

Sincerely,



STEVEN A. WUTHRICH

SAW:ajl

Robert P. Hill (1492)
John A. Adams (0023)
RAY, QUINNEY & NEBEKER
Attorneys for Plaintiff
79 South Main Street, Suite 400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500

No. FILED

JAN 13 1997

Third District Court
By DA
Deputy Clerk, Summit County

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, UTAH

----ooOoo----

WRIGHT/GARFF RESOURCES, L.L.C.,
a Utah limited liability company,

Plaintiff,

v.

THOMAS AMERICAN STONE AND
BUILDING, INC., a Utah corporation,
dba AMERICAN STONE COMPANY,
LON A. THOMAS, an individual, and
UNKNOWN PERSONS designated as
JOHN DOE NO. 1 through 10,

Defendants.

ORDER GRANTING MOTION FOR
PARTIAL SUMMARY JUDGMENT

Civil No. 94-03-00111

----ooOoo----

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On October 28, 1996, at 4:30 p.m., Plaintiff's Motion for Partial Summary Judgment regarding ownership of a building stone deposit in Summit County, Utah came on for hearing before the Honorable Pat Brian with Robert P. Hill and John A. Adams of Ray, Quinney & Nebeker appearing on behalf of Plaintiff Wright/Garff Resources, L.L.C. ("Wright/Garff") and Russell C. Fericks and Mark L. McCarty of Richards, Brandt, Miller & Nelson

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appearing on behalf of Defendants Thomas American Stone and Building, Inc. ("American Stone"), Lon A. Thomas and Beverly Thomas.

Based upon the memoranda and affidavits submitted by Wright/Garff, the argument of counsel and good cause therefor appearing, the Court enters its Findings of Fact, Conclusions of Law and Order as follows:

FINDINGS OF FACT

A. This action involves conflicting claims to ownership of building stone deposits in and under a parcel of real property located in Summit County, Utah, more particularly described as follows ("Lot 38"):

BEGINNING at a point that is due North 2723.833 feet and due East 1304.828 feet from the Southeast corner of Section 19, Township 1 South, Range 5 East Salt Lake Base & Meridian, (said Southeast corner bearing North 89° 23' 18" East from Southwest corner and being the basis of bearing for this description); thence North 58°30'12" East 1244.381 feet; thence South 34° East 847.614 feet to a point on the South line of the Northeast 1/4 of Section 20, Township 1 South, Range 5 East, Salt Lake Base & Meridian; thence South 89°38'12" West along said South line 208.53 feet to the center of section of said Section 20; thence South 0°12'28" East along the West line of the Southeast 1/4 of said Section 20 1326.604 feet to the Southwest corner of the North 1/2 of Southeast 1/4 of said Section 20; thence North 89°38'12" East along the South line of said North 1/2 of Southeast 1/4 65.907 feet to a point on the arc of a 2914.790 foot radius curve, the center of which bears South 19°33'40" East; thence Southwesterly along the arc of said curve to the left through a central angle of 11°35'20", a distance of 589.554 feet; thence North 27°55'59" West 1847.338 feet to the point of BEGINNING.

B. By Warranty Deed dated April 3, 1978 and recorded April 5, 1979 at Book M130, page 682, in the records of the Summit County Recorder (the "Tracy Deed"), Tracy Land and Livestock Company conveyed Lot 38 and other lands in Summit and Wasatch Counties to Utah Title and Abstract Company, as trustee ("Utah Title");

C. The Tracy Deed included the following express reservation:

EXPRESSLY EXCEPTING AND RESERVING, HOWEVER TO GRANTOR, an undivided one-half (1/2) interest in and to all coal, oil, gas and all other metallic and non-metallic minerals, of every kind or character, whether similar or dissimilar to said named minerals, and whether now known or hereafter discovered, including, but without limitation, all building stone, sand, gravel and geothermal rights, now owned by Grantor, whether mined or extracted by surface or underground mining or extraction methods, in, upon or underlying all of said real property, together with the full right of ingress and egress, to prospect for, mine and remove the same.

D. By Special Warranty Deed dated April 1, 1979 and recorded April 19, 1979 at Book M131, page 634, in the records of the Summit County Recorder (the "Utah Title Deed"), Utah Title, as trustee, conveyed the "surface rights only" in Lot 38 to Dee Henshaw.

E. The building stone underlying Lot 38 is not on the surface or immediately below to the surface.

F. The building stone underlying Lot 38 is different in character from, and has a value separate from, the soil itself and vegetation growing on the surface.

G. American Stone has been operating a building stone quarry on Lot 38, and has been mining and removing building stone from Lot 38.

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H. American Stone's quarrying operations on Lot 38 have penetrated beneath the surface of the land.

CONCLUSIONS OF LAW

1. The undivided mineral interest in Lot 38 which was reserved to Tracy Land and Livestock Company in the Tracy Deed has passed from Tracy Land and Livestock Company to Wright/Garff (36.761111%) and to others (13.238889%) by mesne conveyances.

2. The subsurface rights and interests in and under Lot 38, which were retained by Utah Title, as trustee, in the Utah Title Deed, have passed from Utah Title, as trustee, to Wright/Garff by mesne conveyances.

3. The surface rights in the Subject Lands, which were originally conveyed by Utah Title, as trustee, to Dee Henshaw in the Utah Title Deed, have passed from Mr. Henshaw to American Stone by mesne conveyances.

4. The mineral reservation in Tracy Deed and the limited grant of surface rights only in Utah Title Deed are clear and unambiguous.

5. Under the plain language of the Tracy Deed, one-half of all building stone and other minerals, whether mined by surface or underground mining methods, was reserved to the grantor, together with the right of ingress and egress to explore and mine for and remove the same.

6. Under the plain language of the Utah Title Deed, only surface rights in Lot 38 were conveyed to Dee Henshaw. All mineral and subsurface interests not previously excepted or reserved were retained by Utah Title, as trustee.

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7. The "surface rights" on Lot 38 include the surface soil and other materials lying on the immediate natural surface of the land, vegetation growing on the surface and the right to construct structures on the surface and to use the surface for surface uses, such as farming, ranching, residential, commercial, industrial and recreational purposes, together with the right to penetrate the surface incidentally to the exercise of surface rights (e.g., for foundations, footings, basements, water lines or sewer lines).

8. American Stone is the owner of the surface rights in Lot 38.

9. The building stone lying in and under Lot 38 is a mineral.

10. Wright/Garff is the owner of an undivided 86.761111% interest in and to all building stone and other minerals in and under Lot 38, together with the right of ingress, egress and reasonable surface use to mine for and remove the same, including without limitation the right to utilize surface or open pit mining and/or quarrying methods.

ORDER

IT IS HEREBY ORDERED that title to an undivided 86.761111% interest in and to all building stone and other minerals in and under Lot 38, together with the right of ingress, egress and reasonable surface use to prospect for, mine and remove the same, including without limitation the right to utilize surface or open pit mining and/or quarrying methods, be and hereby is quieted in Wright/Garff.

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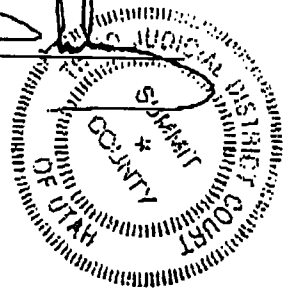
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January, 1997
DATED this 13 day of November, 1996.

BY THE COURT

William T. Brian

Pat Brian
District Court Judge



APPROVED AS TO FORM:
RICHARDS, BRANDT, MILLER & NELSON

Russell C. Fericks

Russell C. Fericks

Mark L. McCarty

Attorneys for Defendants Thomas

American Stone and Building, Inc.,

Lon A. Thomas and Beverly Thomas

200897

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I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL
DOCUMENT ON FILE IN THE THIRD DISTRICT COURT,
SUMMIT COUNTY, STATE OF UTAH.

DATE: Feb. 21, 1997

Joyce D. Ovard

DEPUTY COUNTY CLERK



BOOK W W PAGE 775

Robert P. Hill (1492)
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P.O. Box 45385
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No. _____

FILED

JAN 13 1997

15-24

From District Court

By Deputy Clerk, Summit County

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SUMMIT COUNTY, UTAH**

---ooOoo---

WRIGHT/GARFF RESOURCES, L.L.C.,
a Utah limited liability company,

Plaintiff,

v.

THOMAS AMERICAN STONE AND
BUILDING, INC., a Utah corporation, dba
AMERICAN STONE COMPANY, LON A.
THOMAS, an individual, and UNKNOWN
PERSONS designated as JOHN DOE NO. 1
through 10,

Defendants.

**JUDGMENT QUIETING TITLE AND
DISMISSING OTHER CLAIMS WITH
PREJUDICE**

Civil No. 94-03-00111

---ooOoo---

Pursuant to the Court's Order Granting Motion for Partial Summary Judgment and good cause therefor appearing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the Findings of Fact and Conclusions of Law more fully set out in the Court's Order Granting Motion for Partial Summary Judgment in this matter are hereby incorporated in this Judgment by reference; and

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2. That title is hereby quieted in Wright/Garff Resources, L.L.C., a Utah limited liability company, in and to an undivided 86.761111% interest in and to all building stone and other minerals and 100% of all other subsurface materials and rights in and under the following described real property in Summit County, Utah, together with the right of ingress, egress and reasonable surface use to prospect for, mine and remove the same, including without limitation the right to utilize surface or open pit mining and/or quarrying methods:

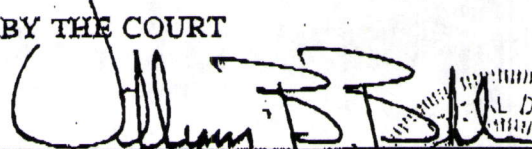
BEGINNING at a point that is due North 2723.833 feet and due East 1304.828 feet from the Southeast corner of Section 19, Township 1 South, Range 5 East Salt Lake Base & Meridian, (said Southeast corner bearing North 89° 23' 18" East from Southwest corner and being the basis of bearing for this description); thence North 58°30'12" East 1244.381 feet; thence South 34° East 847.614 feet to a point on the South line of the Northeast 1/4 of Section 20, Township 1 South, Range 5 East, Salt Lake Base & Meridian; thence South 89°38'12" West along said South line 208.53 feet to the center of section of said Section 20; thence South 0°12'28" East along the West line of the Southeast 1/4 of said Section 20 1326.604 feet to the Southwest corner of the North 1/2 of Southeast 1/4 of said Section 20; thence North 89°38'12" East along the South line of said North 1/2 of Southeast 1/4 65.907 feet to a point on the arc of a 2914.790 foot radius curve, the center of which bears South 19°33'40" East; thence Southwesterly along the arc of said curve to the left through a central angle of 11°35'20", a distance of 589.554 feet; thence North 27°55'59" West 1847.338 feet to the point of BEGINNING. (Also sometimes referred to as "Lot 38".)

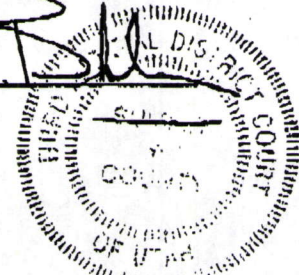
Pursuant to the Court's Order Distributing Trust Account, Dissolving Preliminary Injunction and Dismissing Other Claims with Prejudice and good cause therefor appearing, IT IS HEREBY FURTHER ORDERED that all other claims stated in the Amended Complaint and that all claims stated in the Counterclaim be, and hereby are, dismissed with prejudice and on

the merits, with each party bearing its own costs and attorneys' fees.

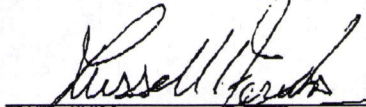
DATED this 13 day of January, 1996.

BY THE COURT


Pat Brian
District Court Judge



APPROVED AS TO FORM:
RICHARDS, BRANDT, MILLER & NELSON

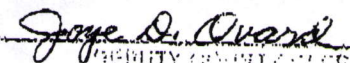

Russell C. Pericks
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American Stone and Building, Inc.,
Lon A. Thomas and Beverly Thomas

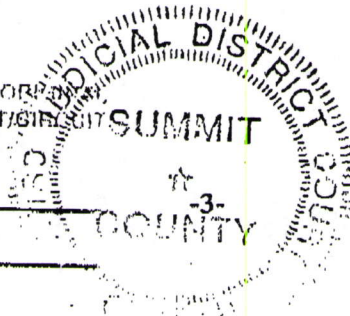
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I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL
DOCUMENT ON FILE IN THE THIRD DISTRICT COURT,
SUMMIT COUNTY, STATE OF UTAH.

DATE: Feb. 21, 1997


JOYCE D. OVERD
COUNTY CLERK



BOOK W IN PAGE 781